

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

LARRY HOLLINGER,	:	C.A. No. 05-06-0033
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
FURNITURE & MORE, Inc.,	:	
a Delaware Corporation, and	:	
TRAVELERS INDEMNITY COMPANY,	:	
A Connecticut Corporation,	:	
	:	
Defendants.	:	

Upon Cross Motions for Summary Judgment

Submitted: August 24, 2006

Decided: August 24, 2006

**Plaintiff's Motion for Summary Judgment is granted.
and Defendants' Motion for Summary Judgment is denied.**

Walt F. Schmittinger, Esquire, Schmittinger & Rodriguez, P.A., 414 South State Street,
P.O. Box 497, Dover, Delaware 19903, Attorney for the Plaintiff

H. Garrett Baker, Esquire, Elzufon, Austin, Reardon, Tarlov & Mondell, P..A. 300
Delware Avenue, Ste. 1700, Post Office Box 1630, Wilmington, Delaware 19899,
Attorney for the Defendants, Furniture & More and Travelers Indemnity Company.

Trader J.

In this civil action for unpaid workers' compensation benefits and liquidated damages, I hold that the plaintiff is entitled to unpaid workers' compensation benefits and liquidated damages because after receipt of the medical bills, the defendants did not pay all of the medical expenses within 30 days of the demand for payment and one of the medical bills remains unpaid at the present time.

The relevant facts are as follows: On November 5, 2004, the plaintiff sustained an industrial accident while an employee of one of the defendants, Furniture & More. By letters of both attorneys dated December 27, 2004 and January 4, 2005, the parties settled a claim for total disability payments and all medical treatment expenses related to plaintiff's ruptured spleen. By letters of December 30, 2004, February 3, 2005, February 7, 2005, and April 13, 2005, the plaintiff's attorneys sent demand letters to the defendants' counsel demanding payment of the unpaid benefits. The defendants failed to pay the medical expenses for which the parties settled within thirty days after the bills were sent to the defendants for payment. These expenses include four bills from Kent General Hospital (KGH) for \$36.00, \$3,035.00, \$2,827.00 and \$14,027.05; two bills from Kent Diagnostic Radiology (KDR) for \$508.00 and \$524.00; and one bill from Delmarva Emergency Physicians (DEP) for \$460.00. On June 28, 2005, the plaintiff filed a civil action in this Court for unpaid workers' compensation fund benefits, liquidated damages, prejudgment and post-judgment interest, and reasonable attorney's fees. The plaintiff has filed a motion for summary judgment and the defendants have filed a cross-motion for summary judgment.

The court must grant summary judgment when, considering the facts in a light most favorable to the non-moving party, there is no material issue of fact. *Pullman v.*

Phoenix Steel Corp., 304 A.2d 334 (Del. Super. 1973). In this case, summary judgment should be granted in behalf of the plaintiff because there is no genuine issue of material fact.

In the case before me, the parties entered into a settlement agreement covering total disability benefits and medical treatment expenses relating to plaintiff's unpaid expenses. It has been held that the principles of *Huffman v. C.C. Oliphant & Son*, 432 A.2d 1207 (Del. 1981) apply to a voluntary settlement agreement which has not yet been approved by the Board. *Seserko v. Milford School Dist.* 1992 WL 19941 (Del. Super. Feb. 4, 1992).

19 Del.C. Sec. 2357 provides that if an employee demands payment of the workers' compensation benefits, and the employer fails to pay those benefit within thirty days after the demand, the unpaid benefits may be collected in the same manner as wages are collectible. 19 Del.C. Sec. 1103(b) states that an employer who wrongfully fails to pay an employee wages is liable to the employee for liquidated damages in the amount of 10 percent of the unpaid wages for each day, except Sunday and legal holidays, upon which such failure continues after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller. The plaintiff's attorney sent demand letters on December 30, 2004, February 3, 2005, February 7, 2005, and April 12, 2005.

The plaintiff, in his initial motion for summary judgment, contends that the *Huffman* claim arises thirty days after the date of the settlement. I disagree. In the case before me where the defendants did not know the amount of the medical bills at the time of settlement of the claim, I hold that the *Huffman* claim does not arise until 30 days after

the receipt of the medical bills by the defendants. This is specifically provided in the governing rules of the Industrial Accident Board. Rule 4(B) provides that “all medical expenses shall be paid by the carrier within thirty days after bills for said expenses are sent to the carrier for payment unless the carrier notifies the claimant or his/her attorney in writing that such expenses are contested or that further verification is required.” In this case none of the medical bills were contested by the defendants and they did not submit a written request for verification.

The defendants contend that the bills were received by present counsel on April 27 and April 28, 2005, and at least seven of the ten medical bills were paid within the thirty-day time frame. The defendants’ contention is incorrect because the bills were received by the previous attorney for the defendants on April 13, 2005. I, therefore, hold that the thirty-day period begins on April 13, 2005. Since the thirty-day time period begins on April 13, 2005, and payment was not made within 30 days of the receipt of the bills, the plaintiff is entitled to liquidated damages in an amount equal to the amount of the unpaid bills except for the \$36.00 bill to KGH. The bill to DEP in the amount of \$460.00 is unpaid at the present time and the plaintiff is entitled to workers’ compensation benefits as to that bill in the amount of \$460.00 and liquidated damages in the same amount.

The following bills from KGH were paid more than thirty days after the bills were received by the defendants: \$3,035.00 for services provided on 2/12/05 and submitted to the defendants on 4/13/05 and paid on 5/24/05 and 7/05/05; \$2,827.00 for services rendered on 12/16/04 and submitted to the defendants on 4/13/05, and paid on 5/24/05 and 7/05/05; and \$14,027.05 for services provided from 11/06/04 to 11/12/04 and

submitted to the defendants on 4/13/05, and paid on 6/03/05 and 7/05/05. The KDR bill for \$508.00 for services provided 12/16/04 and submitted to defendants on 4/13/05 was paid on 7/22/05; and the KDR bill for \$524.00 remains unpaid at the present time. The DEP bill of \$460.00 for services rendered 4/12/05 and submitted to the defendants 5/12/05 was paid on July 21, 2005.

KGH's bill of \$3,035.00 was due on May 13, 2005 and a partial payment of \$2,013.60 was eleven days late. The balance of the bill in the amount of \$121.40 was paid on July 6, 2005, fifty-four days after it became due. KGH's bill of \$2,827.00 was due on May 13, 2005 and was paid on May 24, 2005, which would make the bill eleven days late. KGH's bill of \$14,027.05 became due on May 13, 2005, and was paid twenty days late on June 3, 2005. Although the plaintiff contends that the bill was enclosed in plaintiff's demand letter of December 30, 2006, the defendants do not acknowledge receipt of that bill at that time. Since these facts are in dispute and the defendants acknowledge receipt of the bill on April 13, 2006, the time for determining the *Huffman* claim begins on that date.

DEP's bill of \$460.00 became due on May 12, 2005, and was paid sixty-nine days later on July 21, 2005.

KDR's bill of \$508.00 became due on May 13, 2005, and was paid sixty-nine days later on July 22, 2005. The plaintiff asserts that KDR's bill in the amount of \$1032.00 was enclosed in plaintiff's demand letter of December 30, 2004, but this fact is disputed by the defendants. This bill was paid on February 4, 2005, and may have been received by the defendants thirty days prior thereto. In any event, the plaintiff concedes in paragraph 18 of its Opening Memorandum that this medical bill was timely paid and

liquidated damages are not requested in the affidavit of John J. Schmittinger, Esquire (Plaintiff's Exhibit L attached to plaintiff's motion for summary judgment). Therefore, this claim for liquidated damages is rejected.

The defendants contend that they never agreed to pay the bills in question. I disagree. The letter of Cassandra Roberts, Esquire, and dated December 27, 2004 indicates otherwise (Exhibit A to the Complaint). That letter states "that the compensability of this claim is not disputed and that Travelers is willing to initiate ongoing total disability benefits and process for payment all medical treatment expenses related to a ruptured spleen." I conclude that the defendants agreed to pay for all medical expenses related to the ruptured spleen. Once the defendants agreed to pay the bills in question, they were obligated to make payment within the statutory time frame. *Correa v. Pennsylvania Mfrs. Ass'n Ins.*, 618 F.Supp. 915 (D. Del. 1985), cited by the defendants, is distinguishable from the case before me because in this case the defendants specifically agreed to pay for the treatment in question.

Finally, the defendants assert that they negotiated agreements with the health providers for a reduction of some of the bills. They contend that because of such an agreement, the amount of the reduction was never due. The defendants' contention is incorrect. 19 Del.C. Sec. 2305 strictly precludes an agreement to reduce the employer's responsibility for workers' compensation fund benefits except as permitted by the Workmens Compensation Act and approved by the Industrial Accident Board. *Kelley v. ILC Dover*, 787 A.2d 751 (Del. Super. 2001). Therefore, absent Board approval of such an agreement, the defendants cannot assert an offset based on such an agreement in this Court.

In summary, the plaintiff is entitled to unpaid workers' compensation fund benefits and liquidated damages in accordance with the chart set forth below.

<u>Benefit Awarded</u>	<u>Amount Paid</u>	<u>Liquidated Damages</u>	<u>Total</u>
KGH	\$ 3,035.00	\$ 3,035.00	\$ 3,035.00
KGH	\$ 2,827.00	\$ 2,827.00	\$ 2,827.00
KGH	\$14,027.05	\$14,027.05	\$14,027.05
KDR	\$ 508.00	\$ 508.00	\$ 508.00
DEP	\$ 460.00	\$ 460.00	\$ 460.00

<u>Benefits Awarded</u>	<u>Amount Unpaid</u>	<u>Liquidated Damages</u>	<u>Total</u>
KDR	\$ 524.00	\$ 524.00	\$ 1,048.00

Total Damages: **\$21,905.05**

Based on the above findings of fact and conclusions of law, judgment is entered in behalf of Larry Hollinger and against the defendants, Furniture & More, a Delaware Corporation, and Travelers Indemnity Company, a Connecticut Corporation, in the amount of \$21,905.05, plus prejudgment and post judgment interest at the legal rate, reasonable attorney's fees and costs of these proceedings.

IT IS SO ORDERED.

Merrill C. Trader
Judge